Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications by BellSouth Corporation *et al.*	)	CC Docket No. 02-307
for Authorization to Provide In-Region,	)	
InterLATA Services in Florida and Tennessee	)	
	)	

COMMENTS OF COVAD COMMUNICATIONS COMPANY

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I. INTRODUCTION

Covad Communications Company ("Covad"), by its attorneys, hereby respectfully submits its comments in opposition to the Florida and Tennessee long distance applications submitted by BellSouth.[1] With these applications, BellSouth continues a long tradition of filing such applications prematurely, yet these applications are different because they are the last in the BellSouth region. Should the Commission approve these applications, BellSouth will become the first RBOC in the country to have long distance authority in its entire region. This milestone is not insignificant because BellSouth's broken promises, lingering OSS defects, and new discrimination show that—though it has improved its performance under the whip of the 271 process—it has not *learned* from the process. In short, these applications represent the Commission's last opportunity within the 271 process to see that BellSouth's chronic OSS shortcomings are finally corrected. The Commission should not accept BellSouth's empty promises of OSS fixes at some point in the future, promises that BellSouth has ignored in the past. This time around, the Commission should demand that BellSouth fix its OSS and stop discriminating *before* 271 authorization is granted.

Covad raises two principal objections to these applications, centered on checklist items two and four. First, BellSouth's operations support systems (OSS) fail to provide competitive LECs like Covad a meaningful opportunity to compete. In these comments, Covad highlights BellSouth's ongoing discrimination in the pre-order and ordering OSS that it makes available, discrimination that is serious enough to show that BellSouth has not satisfied its checklist burden of proof. In order to highlight the shortcomings of BellSouth's OSS and UNE performance,

[1] Most of the issues raised in these Comments are region-wide issues. Issues that affect only one state or another are noted.

Covad provides below specific examples of the discrimination that it continues to suffer throughout the BellSouth region.

II. CHECKLIST ITEM 2: OPERATIONAL SUPPORT SYSTEM

A. LEGAL STANDARD

The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.[2] The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing."[3] Because OSS access is a necessary prerequisite to UNE access, the Commission examines a BOC's OSS performance to determine compliance with section 271(c)(2)(B)(ii) and (xiv).[4] OSS access means more than just computer systems: BellSouth must prove it provides nondiscriminatory access to the systems, information, documentation, and personnel that support its OSS.[5] For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.[6]

BellSouth's OSS checklist burden has two components. First, BellSouth must prove that it has deployed functional interfaces and OSS capabilities. Second, it must prove that " the OSS functions that the BOC has deployed are operationally ready, as a practical matter."[7] In order to satisfy the latter prong, BellSouth must prove that it has provided competing carriers the internal

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[2] *See Bell Atlantic New York Order,* at 3990, ¶ 83; *BellSouth South Carolina Order*, 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.
[3] *See Bell Atlantic New York Order* at 3990, ¶ 83.
[4] *Bell Atlantic New York Order,* 15 FCC Rcd at 3990, ¶ 84.
[5] *Bell Atlantic New York Order,* 15 FCC Rcd at 3990, ¶ 84.
[6] *Id* at 3991, ¶ 85.
[7] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, ¶ 88.

business rules and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.[8]

Pursuant to the Commission's section 271 precedent, a Bell Operating Company can take one of two possible pathways to satisfy its burden of proof regarding OSS checklist compliance. As BellSouth well knows from its prior section 271 filings, the Commission considers "the most critical aspect of evaluating a BOC's OSS is the actual performance results of commercial usage or, in the absence of commercial usage, testing results."[9] Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.[10]

B. BELLSOUTH OSS DISCRIMINATION AND DEFECTS

BellSouth performed no third-party testing in Tennessee, and so it seeks to rely on the Florida KPMG test together with its OSS regionality claim to support its Florida and Tennessee 271 applications. There are two problems with this. First, the KPMG test found many flaws in BellSouth's OSS and OSS-related procedures, problems that are so serious that these failures alone demonstrate that BellSouth has not yet fully opened the telecommunications network it controls to competition. Second, BellSouth has discovered new ways to discriminate in providing access to its OSS. These Comments will first address BellSouth's newest discrimination methods and then discuss BellSouth's continuing OSS problems which have been brought to the Commission's attention in the past yet remain uncorrected.

[8] *Bell Atlantic New York Order,* 15 FCC Rcd at 3992, ¶ 88.
[9] *BellSouth Lousiana II 271 Order* at ¶ 92.
[10] *Bell Atlantic New York Order, 15 FCC Rcd 3993, ¶ 89.*

1. BellSouth Orders Line Shared Loops for Itself Using Telephone Number Validation, But Forces CLECs to Order the Same Loops Using Full Address Validation

Line Shared Loops are the principle means by which Covad delivers DSL services to residential customers. Without this UNE, it would be virtually impossible from an economic standpoint for Covad or any other CLEC to provide DSL services at an affordable price for residential use. BellSouth, of course, is an extensive user of line sharing technology itself, and this technology has enabled it to rapidly deploy DSL throughout the region. By using the high frequency portion of the local voice loop, BellSouth has been able to add more than 620,000 customers to its network and projects that number to grow to 1.1 million by the end of the year.[11]

Comparing the quality of the OSS that BellSouth provides for the use of CLECs to the OSS capabilities that it enjoys for its retail customers provides a unique window into its practices because in this area, more than any other, BellSouth and the CLECs are providing the same service over the same population of loops. In other words, whether or not BellSouth discriminates in this area can be determined not by the use of an analog to BellSouth's retail services but by direct comparison to BellSouth's retail OSS. As will be shown below, BellSouth's OSS discrimination is nowhere more apparent than in its customer validation requirements.

In the past, when BellSouth was processing a customer order for its own line sharing service, it would validate the identity of the customer using both the customer phone number as well as the customer's address. This procedure proved to be fraught with errors, however, because there was often a mismatch between the customer's address as entered in the ordering

[11] BellSouth press release dated January 3, 2002 (available at http://bellsouthcorp.com/proactive/newsroom/release.vtml?id=38723)

process and the customer's address as it was recorded in BellSouth's databases. These mismatched orders would drop out of the ordering process for clarification.

This procedure was—and remains—similar for CLECs. When ordering Line Shared Loops from BellSouth, CLECs must place both the customer phone number and address on the Local Service Request (LSR). When there is a mismatch between this information and the information in the BellSouth database, the order is rejected and the CLEC must move to a manual process to clarify the order. The "mismatching" problem represents 18% of all Covad order rejections.

On August 17, 2002, BellSouth corrected this problem for itself, switching to a system for its own customers in which an order can be validated using a telephone number only (see Exhibit 1). The CLECs, however, are still stuck using the old system. In fact, BellSouth never notified the CLEC community of the change and made no effort to re-level the playing field until Covad discovered the change on its own and, in Change Request 0946 submitted on September 9, 2002, requested parity treatment in the ordering process. BellSouth has classified the necessary enhancement to their OSS as a Type 2 regulatory enhancement, but has not yet provided a date on which this change will be implemented. Covad is certainly encouraged by BellSouth's response to Change Request 0946, but the fact remains that once again BellSouth has filed its application prematurely. The Commission should reject BellSouth's request for Florida and Tennessee long-distance authority until such time as BellSouth provides the CLECs with parity treatment in the ordering process, both with regard to this validation problem and the others discussed elsewhere in these Comments.

2. ISPs Reselling BellSouth's Line Sharing Service Can Place "To-and-From" Orders Transferring Service From One Address to Another, While UNE Customers Cannot

On Monday, October 7, 2002, BellSouth implemented an OSS enhancement for those ISPs reselling its line sharing service that remains unavailable to UNE purchasers of Line Shared Loops. In the past if a BellSouth voice customer had resold BellSouth line sharing service via an ISP, BellSouth would accept an order moving the voice service to a new address but would inform the customer that he or she would have to contact their ISP to deal with the line sharing service. When contacted, the ISP would not be able to port the line sharing service directly to the new address. Instead, the ISP would have to put in a disconnect order on the existing service, and then would have to wait until voice service was established at the new address before placing a "new" a line sharing order with BellSouth. This long and cumbersome disconnect/reconnect process was the same for resellers and UNE providers. Now, however, BellSouth resellers have been given a stream-lined process while purchasers of Line Shared Loops are still stuck in the past.

The new process works like this: when the ISP is contacted by a customer who is moving, it can immediately place the order to have the resold DSL service moved as well. This order gets placed in line with the voice transfer order and is automatically provisioned in 24 to 48 hours after the transferred voice service is established at the new address. A planned enhancement to this new process will provision the DSL service at the new address on the same day as BellSouth's voice service is established. CLECs, however, are still stuck in the past with no relief in sight.

As with telephone number validation, BellSouth's retail services developed this product enhancement without consultation with the CLEC community and with no effort whatsoever devoted to ensuring that CLECs would be afforded parity treatment. Instead, Covad discovered the planned enhancement only days before implementation, and BellSouth has not yet set any

date as to when parity in the ordering process will be restored. This is the very essence of discrimination, and the Commission should reject the current applications. BellSouth can reapply when it manages to stop its discrimination and obey the law.

3. BellSouth's Own Prequalification Tool for Line Shared Loops Accesses Raw Loop Data, But BellSouth Refuses to Provide CLECs with Access to this Raw Data

The law requires that BellSouth provide Covad with access to all of the loop makeup information available to any of its own personnel, retail and backoffice.[12] Not only is BellSouth failing to obey this mandate, but it is discriminating in the most insidious way imaginable, giving CLECs access to the prequalification tool for line shared loops that it developed for itself while denying CLECs access to the raw data underlying this tool so that they could have the ability to design a prequalification tool that was optimized for their own services rather than for BellSouth's services.

BellSouth has a vast pool of information describing the loops in the network it controls, information that it stores in a variety of databases in its legacy systems. When BellSouth began to sell DSL services via line sharing, it understood that many of its loops would be able to support the new service while many others would not. BellSouth also understood that a significant influence on its customer's experience in ordering DSL was an accurate "yes" or "no" answer when asked whether line sharing was available to a given loop. Accordingly, BellSouth created a prequalification tool that would dip into its loop databases, extract certain information from them, apply algorithms to this information, and arrive at a prediction as to whether a given loop could support line sharing.

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[12] *See, e.g., In the Matter of Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Mem. Op. and Order, CC Docket No. 01-8, FCC 01-130, 41454 & 58 (Apr. 16, 2001) ("*Verizon Massachusetts Order*"). ¶ 430.

Covad, in accordance with the law, would simply like to be able to do the same thing. Unfortunately, BellSouth will only make available to CLECs the results of its own prequalification tool optimized for its own use, not the use of the CLECs. CLECs are entitled to access to the raw BellSouth loop data so that we can do what BellSouth has done: design a prequalification tool that provides our customers with the most accurate information possible. In fact, the Commission's *UNE Remand Order* is clear on this point:

> An incumbent must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer… Instead, the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer.[13]

Covad has attempted to solve this problem on its own, but to no avail. We submitted Change Control Request 0886 on July 30, 2002, seeking an extract from BellSouth's raw data of the elements that are most important for use in our proprietary prequalification tool. BellSouth denied the request on August 13, 2002, stating that it would be too expensive to implement our request. We then submitted a request to BellSouth for an estimate of the cost of implementing the database extract that we sought and were told that the cost would be $3 to $7 million. To date, BellSouth has been unable to explain why the cost to stop its discrimination would be so incredibly high given that it has a tool that it uses for itself to perform a similar function already. The cost, however, is beside the point. BellSouth is required to give the CLECs nondiscriminatory access to its loop databases, and it is not doing this. The current system

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[13] *See UNE Remand Order,* 15 FCC Rcd 3696, at para. 428.

forces CLECs to use manipulated rather than raw data, and the Commission should reject BellSouth's current 271 applications until such time as it corrects this problem.

4. BellSouth's Additional Line Sharing OSS Defects

i. BellSouth Does Not Return Pseudo Circuit Numbers with FOCs for Line Shared Loops[14]

Although BellSouth has a fully mechanized ordering process for itself, it has thus far proven unable or unwilling to provide the same level of flow-through mechanization for the ordering of Line Shared Loops by CLECs. Equally unfortunate is the fact that KPMG's flawed methodology caused it to largely ignore the two serious errors in BellSouth's OSS that have a major anti-competitive impact on CLECs, and the Commission should not accept these test results without first considering the areas where BellSouth failed as well as areas where the test itself failed. The first of these errors involves the inability of BellSouth's automated systems to return information to Covad that would allow us to validate BellSouth's billing practices. Covad places orders for Line Shared Loops by submitting a Local Service Request (LSR) to BellSouth. BellSouth responds to the LSR with a Firm Order Commitment (FOC) that contains a variety of information that Covad uses to track the order and—eventually—reconcile the bills that BellSouth generates.

One critical piece of information that should be returned with the FOC but is not is the pseudo circuit number. When BellSouth sends Covad a bill that contains—among its thousands and thousands of entries—the charges for a single line shared loop serving one of Covad's customers, those charges will be identified only by the pseudo circuit number. If Covad does not

[14] See generally, Transcript of July 12, 2002, OSS Workshop in Docket 960786B before the Florida Public Service Commission at pp. 25-28 (available online at **http://www.floridapsc.com/psc/dockets/index.cfm?event=documentFilings&docket=960786B&requestTimeout=240** filed on July 18, 2002 at the Florida Public Service Commission website) (hereinafter "Workshop Transcript").

have that number it is impossible to determine if we are being billed properly. To solve this defect in BellSouth's OSS, Covad is forced to stop the flow-through process of the order, manually access the FOC, use information contained on the FOC to manually access BellSouth's CSOTS database, extract the pseudo circuit number from that database, manually input the pseudo circuit number on the Covad order, then manually complete and close the order.[15]

Because, as will be discussed in more detail below, manual handling of an order is very expensive, this defect places Covad at a significant competitive disadvantage. In order to provide consumers and small businesses with innovative, cost-effective DSL service offerings, Covad has automated its processes to the greatest extent possible, thereby minimizing human intervention and maximizing the savings and the quality of service that we can pass on to our customers. By forcing us to manually handle defects that BellSouth does not incur itself, BellSouth is discriminating against Covad.

As of today, BellSouth has stated that this defect will be repaired in its OSS Release 11.0, currently scheduled for 7-8 December, 2002. The fact remains, however, that this defect is a serious problem for Covad and will continue to affect CLECs until it is corrected. Accordingly, BellSouth cannot prove that it provides CLECs with nondiscriminatory access to its OSS, and its current 271 applications should be rejected until such time as BellSouth has complied with its legal obligations to truly open the southeastern telecommunications network to competitors.

ii. BellSouth Begins Billing Covad Before Provisioning a Line Shared Loop[16]

[15] BellSouth does return a circuit number with the FOC for all of its "designed" loops, so it cannot argue that this is an superfluous part of the ordering process. Further, it is difficult to believe that CLECs are expected to pay BellSouth's unwarranted and unnecessary "design" costs just to get the information necessary to validate BellSouth's billing practices. This would be akin to making a purchase at a department store only to be told that it would cost you extra to find out what the department store was planning to charge your credit card.

[16] See generally, id. at pp. 28-31.

The second major defect with BellSouth's OSS for the ordering of Line Shared Loops arises from the fact that when a Line Shared Loop order is placed, BellSouth creates two separate orders internally, one that goes to its billing department and one that goes to the Central Office where the Line Shared Loop is actually provisioned. Unfortunately, BellSouth does not relate these two orders internally. The billing order is generally completed within 24 hours, and, once this has happened, BellSouth deems the order complete and begins to bill for the circuit. The order, however, ***is not*** complete, and many negative consequences flow from this.[17] KPMG admits that it was "aware" of this problem, but further admits that its testing was not designed in a way that could have measured the defect.[18]

First, and most obviously, Covad should not have to pay for a circuit that BellSouth has not provisioned. BellSouth must fix this process so that the billing cycle does not begin until the work in the Central Office has been completed and the loop has actually been delivered to Covad. Second, BellSouth's premature showing of a "completed" order in its billing system can prove quite expensive to Covad in other ways. For example, take a typical situation where a Covad customer places a Line Sharing Order. Even before the order is complete, Covad checks BellSouth's databases to ensure that the technical parameters for the requested Line Shared Loop will support the service. Assuming that the answer to this question is positive, Covad then places the order electronically with BellSouth which generates—as noted above—a billing order and a work order. The billing order completes in about 24 hours and BellSouth improperly begins to bill Covad for the loop. When BellSouth personnel in the Central Office attempt to complete the order, however, they discover that BellSouth's LFACS database contained

[17] See generally, id. at pp. 29-30.
[18] Id. at pp. 30-31.

inaccurate information and the loop actually requires conditioning before it will be able to support DSL service.

Under these circumstances, if BellSouth had not "completed" the billing portion of the loop order, Covad would be able to modify the order and request that the loop be conditioned. Instead, Covad is forced to place a Disconnect Order on the loop even though it was never connected in the first place. This is a much more expensive and time-consuming process than a simple order modification, and this is an added expense that BellSouth itself would never incur under similar circumstances. But this is not where the trouble ends.

Based on the information in BellSouth's databases and the Firm Order Commitment that it returns to Covad after an order has been placed, Covad has given its customer an indication as to when he or she can expect service to begin. Suddenly, however, this window has been lengthened dramatically because now, in addition to needing to condition the loop, Covad has to first wait for BellSouth to process the unneeded disconnect order, and only then can the order be placed for loop conditioning. This cumbersome process leads to dissatisfied customers, and, again, this is not a hardship that BellSouth's own customers would be subjected to. In short, BellSouth's inability to take the simple step of delivering the loop before "completing" the billing portion of the order, costs Covad money and the good will of its customers. Both of these problems are caused solely by a BellSouth OSS defect.

As with the previous defect, BellSouth has stated that this one will be repaired in its OSS Release 11.0, currently scheduled for 7-8 December, 2002. BellSouth, however, has chosen once again to apply for 271 authorization before fixing these defects. To this point there was always the possibility of a later 271 proceeding to ensure that BellSouth took the steps necessary to open the network to competitors. That possibility is now gone, and if these defects are not

actually corrected before its application is granted, BellSouth will have no incentive to fix the serious remaining problems with its OSS. Accordingly, BellSouth cannot prove that it provides CLECs with nondiscriminatory access to its OSS, and its current 271 applications should be rejected until such time as BellSouth has complied with its legal obligations to truly open the southeastern telecommunications network to competitors.

Because KPMG did not perform billing testing in a way that would have caught this billing problem[19] and because KPMG's pseudo-CLEC did not actually have any customers, this serious defect was completely ignored by the testing. This is a serious failing in KPMG's testing, and no argument can be made that a process that always overcharges CLECs for Line Shared Loops is proper in any way. The Commission should reject BellSouth's current applications until it fixes these serious problems.

C. BELLSOUTH'S ONGOING CHANGE CONTROL PROBLEMS

In order to demonstrate that it is providing nondiscriminatory access to its OSS, BellSouth must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."[20] Only by showing that it adequately assists competing carriers to use available OSS functions can BellSouth prove that it offers an efficient competitor a meaningful opportunity to compete.[21] As part of this demonstration, the Federal Communications Commission ("FCC") gives substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.[22] The FCC has concluded that,

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[19] Id.
[20] *Bell Atlantic New York Order* 15 FCC Rcd at 3999, ¶ 102.
[21] *Id.* at 3999-4000, ¶ 102
[22] *Id.* at 4000, ¶ 102.

without a functional change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.[23]

The fundamental problems with this process for BellSouth are well-documented by KPMG's Florida testing and the "not satisfied" criteria PPR1-3, PPR1-4, PPR1-6, PPR1-8, and, secondarily, the "not satisfied" criteria relating to BellSouth's software interface deployment, PPR5-2, PPR 5-3, and PPR5-17: BellSouth retains veto power over the Change Control agenda, is entirely unsupervised by regulators, and operates without effective penalties for delaying, denying outright, or degrading competitive LEC access to needed OSS or other changes.[24] A perfect example of this and of BellSouth's in-your-face brand of discrimination is provided by Covad's efforts to simply get BellSouth to solve the problem described above regarding BellSouth's OSS error that denies Florida CLECs the information needed to verify BellSouth's bills. As will be apparent from this example, BellSouth's behavior in correcting OSS problems is dramatically different for itself than for CLECs: it fixes problems it considers important, but refuses to fix the same problems in the systems that affect CLECs until pressure is applied from some outside source.

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[23] *Id.* at 4000, ¶ 103.

[24] It should be noted that Florida has recently created performance metrics designed to measure BellSouth performance in the Change Control Process. This is, of course, a positive development, but BellSouth has shown a willingness to pay performance penalties month after month without making any effort to fix the problems underlying those payments (i.e. BellSouth paid Covad penalties for the Florida metric "Average order Completion and Completion Notice Interval" in May, June, and July, with its performance getting worse each month). See also, Exception 88, opened on July 1, 2001. KPMG found that the BellSouth's change control process "does not allow CLECs to be involved in prioritization of all CLEC-impacting change requests." Amazingly, a year later and near the end of the testing, this exception remains open. See KPMG Draft Final Report, Version 1.0, Test Reference PPR1-6, pp. RMI-18 through 20 (available at http://www.psc.state.fl.us/industry/telecomm/oss/oss.cfm).

As previously mentioned, BellSouth's Line Shared Loop OSS has a defect that prevents it from returning information to Covad necessary for the verification of BellSouth's bills. As a result, Covad is forced to resort to an expensive and time-consuming manual process to gather this necessary information. Covad took extensive steps to attempt to get this problem solved, but a fix was only scheduled after BellSouth began to feel pressure from state and federal regulators. BellSouth's nonresponsiveness on this issue is well documented.

On January 18, 2002, Covad submitted Change Request 621-FTTF36 to BellSouth specifically requesting that this serious defect be corrected. According to BellSouth procedures, after Covad submitted the change request, the request then had to be identified as either a "Defect"—meaning a problem with BellSouth's OSS that needed to be repaired—or a "Feature Enhancement" which is a functionality that a CLEC wants but is not actually required. Despite the fact that BellSouth's failure to provide the pseudo circuit number amounts to denying Covad the information needed to check if BellSouth bills it fairly, it took BellSouth ***four months*** just to decide how to ***classify*** the problem: on May 17, 2002, it finally declared that its failure to provide the pseudo circuit number was, indeed, a Defect in its OSS. Seeing no movement at all on this Change Request for more than two months, Covad brought the issue to the attention of regulators in conjunction with the federal 271 process for BellSouth's five-state application earlier in the year and in state proceedings in Tennessee and in Florida. In response to this pressure, BellSouth finally scheduled a fix for this defect. Its treatment of a similar defect for which it opened a Change Request itself has been remarkably different.

On May 3, 2002, BellSouth opened Change Request 766 to deal with a precisely analogous defect in its Local Number Portability (LNP) interface, a defect that prevented circuit numbers from being provided in responses to orders for certain non-designed services. ***Within a***

week, BellSouth classified the defect and set a schedule for the defect to be fixed. ***For the defect identified by Covad, however, more than six months passed before BellSouth even scheduled its repair.*** In short: BellSouth fixes problems that concern BellSouth and—unless outside pressure is applied—ignores problems that effect the CLECs.

KPMG has recognized this problem, stating during the workshop that BellSouth's abysmal handling of this OSS defect resulted in the "not satisfied" rating for criteria PPR1-6.[25] This simple fact provides the Commission with a valuable window into BellSouth's thinking about the importance of this testing: in many ways, it simply does not care. This is a strong statement, but it is supported by strong evidence: Exception 123 was opened early this year to document BellSouth's inability to properly classify defects, yet BellSouth only scheduled a fix for this defect when regulators began to care about it. The only explanation for this is that BellSouth does not want or intend to fix problems without outside intervention in the change control process. This is unacceptable, and the Commission, relying on the plethora of "not satisfied" criteria surrounding BellSouth's OSS in the Florida KPMG testing, should reject its long distance application.

D. BELLSOUTH HAS NOT DEPLOYED THE OSS SYSTEMS NECESSARY TO COMPLY WITH CHECKLIST ITEM 2

1. BellSouth Has Failed to Mechanize the Ordering of Critical DSL Loops

Covad orders a loop by submitting a Local Service Request (LSR) to BellSouth. There are many ways to do this: the order can be faxed, or input through on an interface on the internet, or placed electronically in some other fashion. "Mechanization" of ordering refers to the process whereby manual steps in ordering procedures—like using a fax machine—are eliminated and

[25] Workshop Transcript, p. 27, ll. 17-19.

more efficient ways of ordering are implemented. The ideal process is one in which human intervention is done away with entirely for the middle portions of the ordering process. When this sort of efficiency is obtained, the process is said to be a "flow-through" process, and it works like this:

(1) Covad gets a call for service from a new customer;

(2) Covad inputs the customer's information into a computer interface designed by Covad to match specific parameters provided by BellSouth;

(3) the customer information automatically populates a BellSouth electronic LSR form;

(4) the LSR is transmitted to BellSouth;

(5) a BellSouth computer receives the LSR and processes it automatically;

(6) tasks necessary to fill the order are automatically generated and sent electronically to BellSouth personnel responsible for completing the order;

(7) the BellSouth computers also transmit a Firm Order Commitment (FOC) to Covad;

(8) Covad's internal OSS extracts necessary information from the FOC, updates internal databases, and routes necessary information for completing the order to appropriate Covad personnel;

(9) BellSouth personnel take the steps necessary to complete the order;

(10) An order completion notification is sent to Covad;

(11) Covad personnel take the final steps necessary to activate service for Covad's customer; and

(12) The order is closed.

For the telecommunications services that Covad seeks to offer its customers, Covad orders BellSouth's Unbundled Copper Loop—Non-Designed (UCL-ND) loop, its ADSL-compatible Loop, the UDC/IDSL-compatible loop, Line Shared Loops and the DS-1 4-wire Loop (to provision UNE T-1 services). Unfortunately, BellSouth has either failed to mechanize a number of pre-ordering or ordering process for these loops or has refused to fix serious OSS defects that cause the orders to fall out of a mechanized process for manual handling. Further, because BellSouth has failed to make electronic ordering available (through ANY interface) for UCL-ND loops and ADSL loops that require conditioning, Covad must order many of its loops manually.

Manual OSS processes are responsible for several problems aside from the bare fact that by their very existence they demonstrate BellSouth's discrimination against Covad and other CLECs. Not only is it more expensive to do business with manual processes (due to manual order service charges and the increased cost to Covad of having to handle orders manually), but it is hugely inefficient. The lack of electronic ordering capabilities and OSS defects for these loops means that Covad must, for UCL-ND and xDSL loops with conditioning, submit the loop order manually (and, where necessary, manually supplement, cancel, disconnect or change it). For Line Shared Loops, the serious OSS defects discussed in detail above necessitate manual handling by Covad after BellSouth returns a Firm Order Commitment (FOC). By failing to provide electronic ordering for these loops, BellSouth sentences Covad to a prison of slow, expensive and time consuming manual processes for the foreseeable future. This deprives Covad of a meaningful opportunity to compete in the states that are the subject of these applications. Moreover, it demonstrates marked discrimination against Covad, given that

BellSouth retail analogs for these loops can all be ordered electronically with no necessity for manual intervention.

The basic difficulty with manual OSS processes as opposed to mechanized process is illustrated by a comparison of KPMG's experience as set forth in TVV2-5-1 and TVV2-5-4, the former being the criteria measuring BellSouth's fully mechanized EDI system for providing accurate Firm Order Commitments (FOCs) and the latter being its fully manual system for performing the same function. A cursory analysis of TVV2-5-1 reveals that BellSouth's fully mechanized system is very accurate, providing accurate FOCs at a percentage nearing 100%.[26] An examination of other criteria involving fully mechanized processes such as TVV2-4-3, also reveals that in a fully mechanized environment, problems with the system are quickly identified and resolved, and once a problem is fixed, it stays fixed. This high level of performance is due to the fact that in a fully mechanized system, human intervention and human mistakes are minimized, problems in the system are due to easily identified and repaired software and hardware problems, and once a software or hardware fix it put in place, it is in place permanently and will not degrade over time.

Compare this to KPMG's experience with the fully manual processes described in TVV2-5-4. First, BellSouth's mechanized system provided what KPMG deemed to be accurate FOCs at a rate of greater than 99%. BellSouth's manual system, on the other hand, started out operating at an 72.09% rate, and then swung violently up and down between 68.52% and, once, 96.67%. When TVV2-5-4 is analyzed, it becomes apparent that these wild accuracy swings are caused by several factors. First, to keep the accuracy high, almost constant personnel training is required; in general, employees who had just been trained achieved accuracy rates of over 90%,

while three weeks later these employees could only muster accuracy rates in the region of 75%. Second, a "fix" only lasts as long as the employees remember their training; unlike a software or hardware fix that is for the life of the system, retraining eventually wears off. In short, not only are manual processes harder to fix, but once they are fixed, they do not stay that way. Third, even when it is operating at its very best, manual processes come no where near the accuracy of mechanized processes. And, finally, BellSouth's scores are unlikely to remain in the range they were at the end of the test because with the conclusion of the test BellSouth will loose any incentive that it may have had to perform the continual retraining that it took to get a "satisfied" rating on this criteria.

If BellSouth provided a checklist-compliant OSS capability, Covad would not have to deal with these cumbersome and expensive manual processes and the mountain of faxes, phone calls, separate systems, and errors that go with them. Rather, Covad would have a seamless, end-to-end automated transaction that would save time and money. By refusing to implement a fully-functional automated OSS, BellSouth is making a perverse, yet understandable, business decision. Conducting the unbundled loop ordering process manually adds to BellSouth's own cost of doing business (additional headcount at the LCSC, if nothing else). At the same time, competitors are deterred from operating in the BellSouth territory because of the high cost of submitting wholesale orders. Simply put, it is more expensive for Covad to place orders in BellSouth's territory compared to other territories, and it is more difficult to track the progress of orders. The lack of automated OSS functionality ripples across Covad's entire business operation, raising Covad's cost of doing business and hindering its ability to provide superior customer service to its end-users.

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[26] As noted above, this is KPMG's measurement and does not take into account the fact that, as described above,

The competitive impact of BellSouth's failure to provide flow-through mechanization are significant. The Commission has recognized in several past section 271 orders that a BOC that makes only manual OSS capabilities available to competitive LECs does not comply with the OSS requirements of the competitive checklist. There is a simple reason why the Commission has repeatedly reached that conclusion: the competitive harm that Covad suffers as a result of BellSouth's refusal to provide a full range of electronic OSS capabilities is significant.

This disparity in treatment between BellSouth wholesale and retail should not come as a surprise to the Commission. Such disparity has been the hallmark of every BellSouth long distance application. Indeed, note the Commission observation on the competitive harm inflicted by BellSouth's OSS in 1997:

> Without such an integrated system, a new entrant is forced to enter information manually . . . . Entering information manually can lead to significant delays while the customer is on the line, assuming that a carrier wants to complete the order while speaking to the customer. Moreover, whether a carrier completes the order while the customer is on the line, as BellSouth's customer service representatives generally do, or enters the information at a later time, such manual entry of data requires a greater amount of time than BellSouth's retail operation requires. As a result, the need to reenter information may limit a new entrant's ability to process a high volume of orders and would require a new entrant to expend a greater amount of resources than BellSouth to conduct the same number of pre-ordering transactions.[27]

Also in 1997, the Commission reached a similar conclusion as to the cause of errors and the high number of BellSouth rejections of CLEC orders, and the competitive harm CLECs suffer as a result of manual OSS processes:

> Such manual entry of data also could lead to increased errors in entering information when placing an order. As discussed above, BellSouth's systems are rejecting the vast majority of orders submitted by competing

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each and every FOC for a Line Shared Loop order is returned to the CLEC without a pseudo circuit number.

[27] In the Matter of Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, 13 FCC Rcd 539 (1997), at ¶ 156.

> carriers. Although BellSouth claims that these high rejection rates are due to mistakes made by competing carriers, we conclude above that BellSouth's actions have contributed to such errors. It is reasonable to assume that this manual entry of information is a contributing factor to the high error rate, as a number of parties contend. Accordingly, competitors' access to BellSouth's pre-ordering operations support systems is more conducive to errors than is the case for BellSouth's retail operations. When new entrants' customer service representatives make errors because of reentering information, the orders are rejected, and there is an unnecessary delay in processing those orders. As a result, customers may conclude that the new entrant does not match the quality of BellSouth's service, even though the problem stems from the access to OSS functions that BellSouth offers.[28]

i. The Ordering of the UCL-ND Loop Has Not Been Mechanized

The UCL-ND is a plain copper loop over which Covad can provide its customers with various DSL services. BellSouth began offering this loop in response to the concerns of Covad and various state commissions regarding BellSouth's expensive and unnecessary "design services" that it performs on DSL-capable loops. The UCL-ND loop is less expensive than the BellSouth xDSL loops because it does not go through the BellSouth "design process." Unfortunately, the early promise of this loop has been squandered both by BellSouth's incredible and on-going delay in mechanizing it fully and its appalling problems provisioning it properly.[29] *Partial* mechanization of this loop occurred—after a delay of more than five weeks—in late August of this year, but there were and remain numerous defects in the release. BellSouth claims that full mechanization of this loop will occur in its December 2002 software releases.

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[28] *Id.* at ¶ 157.

[29] BellSouth has had serious and recurring problems provisioning the UCL-ND loop properly. After raising this issue in conjunction with BellSouth's Georgia-Louisiana and its Five-State 271 applications, BellSouth has finally taken steps to attempt to correct its problems with this loop, problems that eventually became so severe that Covad was forced to stop ordering the loop region-wide. BellSouth is currently nearing the end of a 90 day trial during which time it dispatched a truck for every UCL-ND loop ordered. This effort has obviously resulted in better results for this loop. The possibility remains, however, that BellSouth's efforts are purely transitory and that this loop will ultimately prove a failure for the CLECs but a quite spectacular success for BellSouth in convincing regulators to support 271 applications while at the same time delivering a worthless product.

Based on its past experience, there is no way to know if BellSouth will actually adhere to this schedule.

ii. The Ordering of Conditioned Loops Has Not Been Mechanized

The ordering of conditioned loops is the second area where the lack of mechanization harms CLECs, and it is another area in which BellSouth's retail operations enjoy an advantage in that its ordering processes are fully mechanized. Loop conditioning is the process by which electronics in a circuit that could interfere with the transmission of DSL signals are removed, and the importance of mechanizing the ordering process for conditioned loops cannot be overstated. Without a mechanized process, for any loop that requires conditioning, Covad is forced once again to revert to a manual ordering process, not because Covad lacks the tools to place the order electronically, but, rather, because BellSouth has not made that functionality available. Thus, for a loop that requires conditioning, any advantage obtained from mechanization of the loop ordering process is lost.

The solution to this problem is simple, yet BellSouth has yet to so much as discuss scheduling the necessary OSS modifications. CLECs should be able to place an order for a loop that directs BellSouth to condition the loop if, and only if required. This avoids the costly and time-consuming process of being forced to manually submit a separate order for conditioning. At a minimum, however, Covad should be able to order loop conditioning in a flow-though process that requires as little human intervention as technologically possible.

III. CHECKLIST ITEM 4: NONDISCRIMINATORY ACCESS TO LOOPS

A. LOOP PERFORMANCE ISSUES

BellSouth produces a Monthly State Summary of its performance in various metrics for each state where it provides service. In preparing this testimony, Covad attempted to use the

most recent data available which includes data from August of this year. As set forth below, the data clearly establishes a pattern of poor performance insufficient to support BellSouth's application for long distance authority.

BellSouth may object to many if not all of these measurements on the grounds that the volumes are not sufficient to provide an accurate measure of its performance. To avoid engaging in needless disputes over the sufficiency of order volumes, Covad has been careful to discuss only those areas where order volume is significant over a several month period and BellSouth's performance is consistently bad over that same period. In other words, the metrics set forth below represent areas where ***BellSouth's performance consistently demonstrates a patter of discrimination month after month.***[30] This pattern of discriminatory performance can hardly be deemed an isolated, statistically insignificant incidence of non-parity treatment.

1. Percent Provisioning Troubles Within 30 days

Percent Provisioning Troubles Within 30 Days measures the percent of trouble reports filed for loops within 30 days of installation. Generally, this metric assesses the quality of the installation of an xDSL loop, since loop quality is an essential aspect of non-discriminatory loop provisioning. In the Southwestern Bell Texas 271 Order, the FCC found two important reasons why measurement of trouble tickets within 30 days is important for determining checklist compliance. First, trouble reports within 30 days are "indicative of the quality of network components supplied by the incumbent LEC."[31] Second, the FCC concluded that advanced services customers that experience substantial troubles in the period following installation of an xDSL-capable loop are unlikely to remain with a competing carrier.[32]

[30] For a detail breakout of all the metrics discussed in this section, please see Exhibit 2.
[31] *SWBT Texas 271 Order,* ¶ 299.
[32] *Id.*

BellSouth's results on this critically important measure show a breathtaking level of discrimination. The results are summarized below:

	Percent Provisioning Troubles w/in 30 Days (dispatch)			Percent Provisioning Troubles w/in 30 Days (non-dispatch)		
	BellSouth	Covad	Covad Volume	BellSouth	Covad	Covad Volume
Florida						
May	4.32%	27.71%	83	3.01%	12.08%	207
June	4.56%	40.74%	54	3.33%	11.92%	151
July	5.15%	29.41%	34	2.94%	10.48%	124
August	4.52%	37.14%	35	2.05%	16.36%	110
Tennessee						
May	3.69%	20.00%	10	1.70%	4.44%	45
June	4.05%	0.00%	5	3.27%	6.82%	44
July	4.29%	50.00%	4	3.00%	14.00%	36
August	4.65%	14.29%	7	2.00%	23.00%	48

Even excluding the Tennessee results for dispatch orders—which are at volumes low enough that a single bad loop could dramatically skew the numbers—it is absolutely clear that month-after-month, ***BellSouth installs loops far more reliably for its own customers than it does for CLEC customers.*** Any complaints that BellSouth might make about the order volumes in areas other than for dispatch orders in Tennessee should be laid to rest by its ***consistently bad performance*** on the metrics with even moderate volumes. It is one thing to cry foul about complaints arising from poor performance based on only 4 loop orders, but it is an entirely different matter to assert that the numbers do not accurately measure your performance when those numbers are fairly consistent over a four month period and over a number of different order volumes. BellSouth's loop installation performance for CLECs is miserable.

2. Maintenance Average Duration

The purpose of this metric is to measure the time that it takes (in hours) for BellSouth to complete work once a trouble ticket has been issued. This measurement is, again, critical to the customer experience because it provides a direct measure of down-time. BellSouth's performance on this metric—as shown in more detail in Exhibit 2—is consistently bad in both Tennessee and Florida. Once again belying BellSouth's assertion that low volume is the explanation for its consistent poor performance, its performance for Covad in Tennessee is worst in months where Covad's volume is highest. The Commission should reject BellSouth's current applications until it can remedy its poor performance on this metric in Florida and Tennessee.

3. Percent Repeat Troubles Within 30 Days

This measures the percentage of lines/circuits that have more than one trouble report in a thirty day period. As with all of the other measures, poor performance by BellSouth on this measure can translate directly to lost customers because repeat troubles can destroy customer confidence. Once again, BellSouth's performance on this metric has been miserable.

In Florida, where order volumes were higher, BellSouth's performance was significantly worse for Covad than for itself in three of the four months measured. In Tennessee it was the same. Once again, this consistent, non-parity performance should lead the Commission to delay these applications until BellSouth can correct the underlying problems causing its discriminatory performance. Low volume may be an explanation for a poor month, but it is not an explanation for consistently bad performance month after month after month.

This proceeding provides the Commission with an opportunity to review the state of competition in Florida and Tennessee and to determine whether BellSouth has provided CLECs with a meaningful opportunity to compete there. The metrics discussed above give but a glimpse of the type of performance Covad and other CLECs receive from BellSouth, and the simple fact

that these numbers reveal is this: BellSouth performs far better for its retail operations than for CLECs. These statistics represent dramatic discrimination against Covad, discrimination that should preclude BellSouth from having its 271 applications granted. As CLECs in the BellSouth region struggle to find a foothold in the marketplace, BellSouth's performance in delivering loops continues to pose a significant obstacle to successful competition. Before BellSouth is permitted to win 271 approval in these states, the Commission should first ensure that BellSouth-sponsored obstacles to competition have been eliminated. As is apparent from the statistics, this day has not yet arrived.

CONCLUSION

For the reasons stated herein, the Commission should reject the applications of BellSouth for authority to provide in-region, interLATA services in Florida and Tennessee.

Respectfully submitted,

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